

ALVIN EUGENE COLE,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 93-5-A
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 22, 1993

Appellant Alvin Eugene Cole seeks review of an August 21, 1992, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (BIA; Area Director), declining to alter certain BIA records. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

It does not appear that appellant is an enrolled tribal member. BIA records indicate that his father was Joseph Cole, Creek Freedmen NB-728. Appellant contests the accuracy of this information, stating that his father was actually the person shown in BIA records as Joseph Asbury, Creek 290. Apparently, appellant does not dispute the identity of his father, but contends that BIA's records have been altered to conceal the fact that Joseph Asbury and Joseph Cole are actually the same person. In support of this contention, appellant presents an extensive argument alleging fraud and alteration of official documents. He presents an elaborate analysis of BIA and other documents to show that there are inconsistencies, inaccuracies, and alterations evident on the face of the documents, and, from that analysis, reaches the conclusion that he is actually descended from a Creek by blood, not a Creek freedman.

The administrative record contains correspondence and requests for information from appellant extending back to 1985. It appears that by 1990, a certain amount of frustration had set in on the part of both appellant and BIA. Appellant apparently believed that he had presented a clear and cogent analysis of the records showing conclusively that his father was the person identified as Creek 290. When BIA did not agree with appellant and act upon his request to correct the records, appellant apparently decided that BIA's inaction was the result of prejudice and a continuing conspiracy against his family and/or an attempt to cover up the fact that former BIA employees had altered the records. BIA seems to have believed, just as strongly, that its records accurately reflected that appellant's father was Creek Freedmen NB-728, and that appellant's arguments were based upon faulty logic and unsubstantiated assumptions. BIA apparently believed that appellant had not provided any concrete evidence on which it could base a conclusion that its

records were in error, and that, in any event, appellant's request to amend the records was prohibited by the Act of April 26, 1906, 34 Stat. 137.

It appears likely that this impasse resulted in the Area Director's decision to issue an appealable decision, so that appellant could bring the matter to another office. By letter dated August 21, 1992, the Area Director informed appellant that he had provided appellant with all the information to which appellant was entitled under the Privacy Act, 5 U.S.C. §552a (1988), and that, to the best of his knowledge, appellant's father was Creek Freedmen NB-728. Accordingly, the Area Director denied appellant's request that BIA amend its records on Joseph Cole, Creek Freedmen NB-728. The Area Director further stated: "Since the rolls of the Five Civilized Tribes were closed by Act of Congress effective March 4, 1907, and no provisions for additions or changes to these rolls were made, we have no authority to change the records."

Appellant appealed this decision to the Board. Only appellant filed a brief .

As best the Board can determine, the relief appellant seeks is to have the name Joseph Cole, Creek Freedmen NB-728, equated with the name of Joseph Asbury, Creek 290. Although the Board notes that there is no suggestion that appellant's father ever questioned his own enrollment, even though he lived until 1968, it does not decide whether or not appellant has shown an error in the BIA records. It does hold, however, that the rolls of the Five Civilized Tribes were closed as of March 4, 1907, pursuant to section 2 of the Act of April 26, 1906, 34 Stat. 137, 138, which provides "[t]hat the rolls of the [Five Civilized] tribes * * * shall be fully completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date."

BIA lacks authority to take action that would add Joseph Cole, Creek Freedmen NB-728, to the roll of Creek by blood.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Muskogee Area Director's August 21, 1992, decision is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge